

Appeal Decision

Site visit made on 5 October 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

APP/R0660/X/22/3299585

Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by the Cheshire East Council to grant a certificate of lawful use or development.
- The appeal was made by Miss Stephanie Danford.
- The application, reference 22/1173C, was dated 22 March 2022, received by the Council on the same day. It was refused by a notice dated 21 May 2022.
- The certificate of lawfulness or development sought was to replace existing timber shed with a tiled roof brick built outbuilding measuring 2m x 4m.
- The Application was made under section 192(1)(b) of the Act for a certificate of lawfulness for the construction of a 2m x 4m brick built shed to replace existing timber shed in the front garden of the house at Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG.

Summary of decision: A certificate of lawfulness is not issued.

Costs applications

1. Cheshire East Council made an application for an award of costs against the Appellant, Miss Danford. In turn, Miss Danford made an application for an award of costs against the Council. Both applications are the subject of a separate decision.

Application proposal

2. The Applicant, Miss Danford, wished to replace the small timber built shed in the front garden of her home at Bridge Cottage, Bradwell Road, Bradwell with a new brick built shed of 2m x 4m floor area. No height was specified.

Applicant's case

3. Miss Danford said the application had been made following her query to the Council as to whether planning permission was required for the replacement of the timber shed in the front garden of her home. She appealed against the Council's refusal to issue a certificate of lawfulness for the project. Miss Danford said the new building would merely be a like for like replacement.

Legal background

4. Where an existing building is to be demolished and replaced with a similar new building, there is no right to carry out those works without the need for planning permission. The case of *Hancock v SSCLG & Windsor and Maidenhead RBC* [2012] EWHC 3704 (Admin) determined that where a

building is demolished and a replacement is constructed without planning permission, the only lawful use is the lawful land use. There are no use rights for a building on the site. Also, in the case of *Oates v SSCLG & Canterbury CC* [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251 it was said that lawful use rights attached to a building are lost when the building ceases to exist as such and is replaced.

5. The situation is different where a building is repaired or where works might amount to 'maintenance' or 'rebuilding'. It would be a matter of fact and degree to determine whether reconstruction works could be classified as repairs or whether demolition and re-building works amounted to development requiring planning permission.
6. Permitted development rights allow householders to improve and extend their homes without the need to apply for planning permission. The extent and limits to such works are set out in The Town and Country Planning (General Permitted Development) Order 2015 as amended, (the Order).
7. Article 3 to the Order, Schedule 2 Permitted development rights, Part 1 - Development within the curtilage of a dwellinghouse at Class E.(a) permits the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, Those concessions are subject to a number of conditions and limitations. Development is not permitted by Class E if — E.1 (c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

Assessment

8. Miss Danford's proposed replacement shed would be built forward of the front road facing wall of her home at Bridge Cottage. It cannot therefore benefit from the Order concessions set out in Class E. It would require planning permission.
9. Much of the representations put forward dealt with amenity and alleged unfairness. However, the Lawful Development Certificate procedure is not concerned with the planning merits of the case as there is no planning application and no conditions can be added to a certificate of lawfulness. The appeal must fail.

FORMAL DECISION

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the construction of a replacement of an existing timber shed with a tiled roof, with a new brick built outbuilding measuring 2m x 4m in the front garden of the house at Bridge Cottage, Bradwell Road, Bradwell, Sandbach CW11 1RG was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(3) of the Act accordingly.

 INSPECTOR